

## Comment Set 35, cont.

Ms. Judy Brown

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ratio. The proposed measure does not adequately mitigate the impact to a less than significant level. The potential for complete restoration of habitat acreage and value is low. Nor does the proposed measure provide compensation for temporal loss of wetland habitat. Therefore, DFG recommends that in addition to the proposed restoration, additional mitigation should be required. Acceptable additional measures would include creation or enhancement of similar wetland habitat at a 1:1 ratio (for a combined 2:1 mitigation ratio) at a suitable offsite location; or enhancement of onsite and contiguous marsh habitat by restoring tidal flush. This could be accomplished by removing or lowering the existing Kinder Morgan pipe across Peyton Slough that currently affects tidal flow in the marsh.

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**Mitigation Measure BB-5c. Riparian Avoidance and Restoration.** The project proposes 64 water crossings. Twelve crossings for a total of 10,605 feet are proposed for HDD; 35 crossings (3,350 feet) are proposed for slick or conventional boring; and 16 crossings (550 feet) are proposed to open cut. The DEIR states (page B.33-34) that dewatering techniques are not proposed for the open cut crossings. However, mitigation measure HS-1b proposes to divert flow and work "in the dry." DFG recommends that open cut crossings be done under "dry" conditions to minimize erosion and sediment transport that could affect aquatic resources.

35-5

To mitigate impacts to riparian forest, the DEIR proposes, in part, to identify and avoid riparian forest by boring under streams where feasible. However, the DEIR does not disclose under which circumstances it will or will not be feasible to bore.

Riparian forest habitat, as well as streambed, bank, and channel fall, under the jurisdiction of DFG pursuant to Section 1600 et seq. of the Fish and Game Code. A Streambed Alteration Agreement (SAA) would be required to open cut-cross a stream, bore/drill under a stream, or remove riparian vegetation. DFG, as a responsible agency under CEQA, will consider use of the final EIR in issuance of an SAA. However, any stream impacts not disclosed in this EIR may be subject to later CEQA documentation. Therefore, DFG recommends that each proposed stream crossing be described and evaluated for impacts, and suitable site-specific mitigation measures be

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disclosed in the final EIR. Under CEQA, it is inappropriate to defer the development of mitigation. Future consultation with DFG to address impacts and mitigation for creek crossings is considered deferring.

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Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed project. Without a complete and accurate description of the existing physical conditions in and around the project site, the DEIR may provide an incomplete analysis of project related environmental impacts.

### **Mitigation Measure BW-3a.**

**California Red-legged Frog.** The California red-legged frog (CRLF) is listed as threatened pursuant to the Federal Endangered Species Act (FESA). Therefore, take of CRLF would require appropriate authorization from USFWS pursuant to sections 7 or 10 of the FESA.

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CRLF are designated as a "species of special concern" by DFG. Authorization to capture CRLF for mitigation management purposes is provided by DFG via a letter that describes the management activity.

**Giant Garter Snake.** The giant garter snake (GGS) is listed as threatened pursuant to FESA and the California Endangered Species Act (CESA). Therefore, take authorization may be required from both USFWS and DFG. Take authorization would be required from DFG unless mitigation measures could be developed that would avoid mortality or capture/handling of individuals. State authorization for take could be obtained pursuant to Fish and Game Code 2081(b) (CESA incidental take permit), or Fish and Game Code 2080.1 (CESA consistency determination). DFG recommends that USFWS's *Standard Avoidance and Minimization Measures During Construction Activities in Giant Garter Snake (*Thamnophis gigas*) Habitat* be implemented ([http://sacramento.fws.gov/es/documents/ggs\\_appendix\\_c.htm](http://sacramento.fws.gov/es/documents/ggs_appendix_c.htm)).

**Western Burrowing Owl.** A petition to list the western burrowing owl under CESA is currently under review. If

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the burrowing owl is listed prior to implementation of project activities that would result in take of an owl, then an incidental take permit could be required.

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DFG agrees the burrowing owl can be passively excluded from a burrow during the non-breeding season (September 1 through January 31). However, the proposed mitigation is inadequate. DFG recommends that two artificial burrows should be installed for each burrow that is closed (filled in or owls excluded) in the project area which is determined to be suitable for nesting by burrowing owl. Burrows should be evaluated for nesting suitability by use of a video probe. Each pair of replacement artificial burrows should be constructed on property that is protected in perpetuity and provides adequate foraging habitat for one pair of burrowing owls. Monitoring of the burrows should be conducted for a five-year period. Monitoring reports should be submitted to DFG and the lead agency.

**Salt Marsh Harvest Mouse.** The salt marsh harvest mouse (SMHM) is listed under both CESA and FESA as an endangered species. In addition, SMHM are designated as a fully protected animal pursuant to Fish and Game Code Section 4700. Fully protected species may not be taken or possessed at any time. Therefore, DFG cannot authorize preconstruction trapping surveys for SMHM. DFG recommends hand removal of suitable habitat to avoid take of SMHM. Use of hand-operated mechanical trimming devices, as proposed in the DEIR, is not recommended since it may result in take of an individual SMHM. Exclusion fencing shall be placed around areas cleared of vegetation to preclude mice from moving back into the active construction zone.

**B.4 Pipeline Construction.** This section identifies that during all phases of construction, refueling and lubrication of construction equipment will occur at staging yards and along the construction ROW (page B-25). Spill response plans are also mentioned on page B-29. However, there is no mention or identification of potentially significant environmental impacts to potential spills of fuels, lubricating oils, or other products (drips to hundreds of gallons) from equipment in the ROW during construction. This type of Environmental Contamination Issue should be identified in Table ES-1 and discussed in the appropriate sections. To minimize this type

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